



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/730,210	12/08/2003	Marc Richelsoph	BBM-141US2	2079
23122	7590	03/09/2007		
RATNERPRESTIA P O BOX 980 VALLEY FORGE, PA 19482-0980			EXAMINER SHAFFER, RICHARD R	
			ART UNIT	PAPER NUMBER
			3733	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		03/09/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/730,210	Applicant(s) RICHELSOPH ET AL.	
	Examiner Richard R. Shaffer	Art Unit 3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 December 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8, 10-17, 21, 50-53, 57 and 59-66 is/are pending in the application.
- 4a) Of the above claim(s) 13, 14, 50-53, 57, 59, 60 and 64-66 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10-12, 15-17, 21 and 61-63 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 December 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>4/21/2004; 7/29/2004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of **Species I** of the Screw Retaining Mechanism (**Figure 2A**), **Species I** of the Bone Plate Aperture (**Figure 3A**), **Species I** of the Screw (**Figure 5**) and with an Insert (**Figure 21B**) in the reply filed on December 14th, 2006 is acknowledged.

Claims 13, 14, 50-53, 57, 59, 60 and 64-66 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on December 14th, 2006.

Drawings

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: "**26**" and "**74**". Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

The abstract of the disclosure is objected to because of undue length. An abstract must be a concise statement of what the applicant feels is the novelty of the invention in the range of 50 to 150 words. Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 7, 10-12, 15, 16 and 21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 7 recites the limitation "said elongated slot" in lines 1-2. There is insufficient antecedent basis for this limitation in the claim.

Claims 10-12 recite the limitation "said screw retaining means is further defined as an insert." The specification as well as claim 61 both refer to an insert/insert means as what is shown in Figure 21B. Claim 61 also claims the insert and screw retaining means separately. Claims 10-12 blur this distinction by referring to the screw retaining means as also an insert, which is improper and causing the claim to become indefinite.

Claim 15 recites the limitation "said insert" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 16 recites the limitation "said insert" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Art Unit: 3733

Claim 21 recites the limitation "claim 20" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-8, 10-12, 15-17, 21 and 61-63 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-6 of U.S. Patent No. 6,695,846. Although the conflicting claims are not identical, they are not patentably distinct from each other because the difference between the claims lies in the fact that the patent claims include more elements and are thus more specific. Thus, the invention of the patent is in effect a species of the generic invention of the application claims. It has been held that the generic invention is "anticipated" by the "species." See *In re Goodman*, 29 USPQ2d 2010 (Fed. Cir. 1993).

Art Unit: 3733

Claims 1-8, 10-12, 15-17, 21 and 61-63 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 22, 26-33, 35, 36, 42, 54 and 55 of copending Application No. 10/401,997. Although the conflicting claims are not identical, they are not patentably distinct from each other because the difference lies in the fact that the copending application recites functionally that the screw retaining means is for use with a bone plate. Therefore, it would have been obvious to one having ordinary skill in the art to have provided a bone plate for the screw retaining means.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6, 8, 10, 15-17, 21 and 61-63 are rejected under 35 U.S.C. 102(b) as being anticipated by Ralph et al (US Patent 5,607,426).

Ralph et al disclose an assembly (**Figures 1-8**) comprising: a curved base plate (**100, Figure 3a**) having at least one aperture (**110**) extending through with a recess (**111**); the aperture extending along the longitudinal axis of the plate;
[First Interpretation] a screw retaining means (**142**) having a recess (**143**) to encompass the head of a bone screw; the screw retaining means being rotatable and

Art Unit: 3733

locks by rotating elements (147) into the recesses (111) and when inserted locks/blocks the screw head and when rotated out unlocks/doesn't block the screw head.

[Second Interpretation] a screw retaining means (132) having a recess (134) movable and rotatable within an insert means (142); the screw retaining means (132) having a c-shaped compressible washer (136) to be inserted into a groove (145) of the insert (142) which forms a groove in the aperture (110).

Claims 1 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Richelsoph (US Patent 6,017,345).

Richelsoph discloses a base plate (**Figure 11**) with screw retaining means (26, 28) insertable into a slot (44), the slot disposed at an acute angle because the plate is curved (as shown in **Figure 12**).

Claims 1 and 10-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Michelson (US Patent 6,138,550).

Michelson discloses a base plate (**Figure 33**) having screw retaining means (20) having an eccentric hole (relative to its central axis) that can rotate into a concentric position relative to apertures receiving screws (30).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard R. Shaffer whose telephone number is 571-272-8683. The examiner can normally be reached on Monday-Friday (7am-5pm).

Art Unit: 3733

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Richard Shaffer
March 2nd, 2007



EDUARDO C. ROBERT
SUPERVISORY PATENT EXAMINER